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NTSB Order No. EA-4247

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 1st day of September, 1994

DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12995
v.)	
)	
CARL ADAMS,)	
)	
Respondent.)	
)	

OPINION AND ORDER

Respondent has appealed from the oral initial decision issued by Administrative Law Judge William R. Mullins at the conclusion of an evidentiary hearing held in this matter on May 25, 1993.¹ In that decision, the law judge affirmed an order of the Administrator suspending respondent's Inspection Authorization for 365 days based on his alleged violation of 14

¹ Attached is an excerpt from the hearing transcript containing the oral initial decision.

C.F.R. 43.13(b) and 43.15(a)(1).² For the reasons discussed below, respondent's appeal is denied and the initial decision is affirmed.

It is undisputed that on April 23, 1991, respondent certified that he had performed an annual inspection of a Cessna 150, registration number ("N" number) N18027, and that he certified the aircraft as airworthy. It is further undisputed that some 10 months later, during the course of a 100-hour inspection, a Cessna 150 bearing the same "N" number and data plate was found to be unairworthy due to numerous discrepancies.

The Administrator described these discrepancies in the complaint:

- a. The installed propeller was not approved for the

² **§ 43.13 Performance rules (general).**

* * *

(b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).

§ 43.15 Additional performance rules for inspections.

(a) *General.* Each person performing an inspection required by Part 91, 123, 125, or 135 of this chapter, shall --

(1) Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements;

* * *

aircraft.

b. All four cabin seat rails had been removed from their original position in order to accommodate a different style seat.

c. The aircraft had a flat landing gear. [It was established at the hearing that the manufacturer installed flat steel landing gear only on 1970 and earlier models. This aircraft purported to be a 1973 model, which would have been manufactured with a tubular spring steel landing gear.]

d. The aircraft data plate was installed in the wrong place.

e. Major repair on the left hand horizontal stabilizer [new skin riveted down over existing skin and rivets] not documented in the aircraft records.

f. Missing and improperly driven rivets in the left wing strut to main spar support bracket.

g. Missing rivets along the length of the left wing upper spar cap.

h. All visible ribs in the left hand wing were wrinkled.

The above-described discrepancies came to light during a 100-hour inspection begun in early 1992. The condition of the aircraft was reported to the FAA and, on February 15, 1992, FAA inspector Michael R. Jordan inspected the aircraft. Inspector Jordan confirmed the existence of the above-described discrepancies and also testified that the aircraft appeared to be a combination of "parts and pieces" from at least two different aircraft. Although the data plate identified the aircraft as a 1973 model, some of its components (e.g., its cabin door and landing gear) were available only on earlier model Cessnas. Inspector Jordan found no maintenance entries or Form 337s³

³ For certain major repairs and alterations, a Form 337 is

reflecting the several major repairs and alterations he observed on the aircraft.

The maintenance records provided by the then-current owner (Mr. Smith) indicated that, other than the 100-hour inspection which was underway when the discrepancies were discovered, no maintenance had been performed on the aircraft since the April 1991 annual inspection certified by respondent. Further investigation revealed that the prior owner of the aircraft (Mr. Mauldin) had hired respondent to perform the annual inspection shortly after he purchased it from an aircraft dealer. He testified that no further maintenance was performed on the aircraft during his tenure as its owner. After flying the aircraft only two or three times, Mr. Mauldin sold the aircraft to Mr. Smith.⁴ Mr. Smith testified that, shortly after purchasing the aircraft from Mr. Mauldin, he leased it to an organization which apparently used it for flight instruction. However, other than the 100-hour inspection then underway, he denied performing or authorizing any maintenance on the aircraft.⁵

Inspector Jordan concluded that respondent's 1991 annual
(..continued)
required to be submitted to the FAA. See 14 C.F.R. Part 43,
Appendix A and B.

⁴ At the hearing, Mr. Mauldin examined photographs of the unairworthy aircraft and confirmed that they appeared to be of the aircraft he once owned. (Tr. 55-56.)

⁵ Mr. Smith testified that, upon discovery of the discrepancies here at issue, he surrendered the airworthiness certificate and sold the aircraft for salvage.

inspection was deficient, explaining that if respondent had followed the standards outlined in 14 C.F.R. Part 45 and Appendix D, he would have discovered and addressed the above-described discrepancies.

At the hearing, respondent acknowledged that he inspected a Cessna 150 bearing the same "N" number and data plate as the aircraft here at issue, but asserted (in his opening and closing statements) that the discrepant aircraft viewed by Inspector Jordan was not the same aircraft he inspected in April of 1991.

However, he offered no witnesses or evidence in support of his position and, in spite of the law judge's warning that he could not consider respondent's unsworn statements as evidence, declined to testify. In his initial decision, the law judge described the Administrator's case as "weak," but explained that, without any evidence or testimony from respondent that this was not the aircraft he inspected, it seemed to him more probably true than not true that this was the same aircraft, and that it was in the condition described when respondent signed off on the annual inspection.⁶ Accordingly, the law judge held that the preponderance of the evidence in the record supported the

⁶ The law judge commented:

I think that I really bent over backwards, Mr. Adams, to give you an opportunity to raise your hand and be sworn and tell me that this wasn't the airplane you worked on and you didn't do it. . . . There's a huge hole there and all you had to do was testify under oath that that's not the same plane. But you didn't do that and you have your reasons, I'm certain.

(Tr. 81-82.)

Administrator's case, and he affirmed the order of suspension.

On appeal, respondent again asserts that the aircraft he inspected was a different Cessna 150 bearing the same data plate and "N" number, and suggests that "someone" changed the data plate and "N" number after his inspection. He maintains that the Administrator did not prove that the discrepant aircraft was the same aircraft he inspected, and asserts that there was no need for him to testify to prove his innocence because Inspector Jordan had already "confirmed that the collection of parts in Midland [Texas] was not the plane respondent had inspected." (App. Br. at 1.)

Respondent mischaracterizes Inspector Jordan's testimony. Although Inspector Jordan did acknowledge that the aircraft was not a 1973 model aircraft, as reflected on its data plate, he did not say that the aircraft was not the same one respondent inspected. To the contrary, his investigation indicated that it was the same aircraft. Indeed, at least one of the discrepancies respondent was charged with failing to address (the flat landing gear which was available only on aircraft manufactured prior to 1970) related to the alleged inconsistency between the data plate and the physical characteristics of the aircraft. Therefore, contrary to respondent's suggestion in his brief, Inspector Jordan's testimony does not exculpate respondent.

While the Administrator presented no direct evidence of the condition of the aircraft at the time respondent inspected it, we have long recognized that circumstantial evidence may be the only

evidence available in cases such as this one where an improper repair or inspection is not discovered until some time after the alleged violation. Administrator v. Dilavore, NTSB Order No. EA-3879 (1993). In such cases, the Administrator can present a prima facie case through evidence which raises a reasonable inference that defects subsequently discovered existed at the time of the inspection at issue. Administrator v. Dickman, 5 NTSB 77 (1985).

We agree with the law judge that the Administrator's evidence in this case was sufficient to raise an inference that the aircraft with the discrepancies was the same aircraft inspected by respondent. Moreover, we think that the nature of the discrepancies discovered -- most of which relate to physical characteristics of the aircraft and could not have resulted from wear and tear due to intervening usage of the aircraft -- raise an inference that they existed at the time of respondent's inspection. Respondent failed to rebut that inference. Accordingly, the law judge properly affirmed the Administrator's order of suspension.

Respondent makes several procedural challenges, none of which provide a basis for reversal or modification of the initial decision. He alleges that the Administrator failed to respond in a timely manner to his pre-trial discovery,⁷ to provide respondent with "minutes" of the informal conference, and to

⁷ It appears from the record that the Administrator mailed his response to respondent's discovery request six days prior to the hearing.

investigate unspecified allegations made by respondent at the informal conference. However, respondent has identified no rule or duty that was violated by the Administrator in connection with any of these matters, and we are aware of none. Moreover, respondent has not shown, or even claimed, that any prejudice resulted from these alleged lapses. As for his assertion that the law judge "failed to produce Mr. Fred Dryden [an FAA inspector who was apparently present at the informal conference] as requested by respondent" (App. Br. at 2), this is apparently related to respondent's "Motion to Subpoena" Mr. Dryden, which appears in the record. However, in light of respondent's failure to object at the trial level to the law judge's apparent failure to issue this subpoena, we think respondent has waived any right to raise the issue on appeal.⁸

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision is affirmed; and
3. The 365-day suspension of respondent's Inspection Authorization shall commence 30 days after the service of this opinion and order.⁹

HALL, Acting Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board, concurred in the above opinion and order.

⁸ Respondent's failure to object earlier deprived the law judge of an opportunity to explain or reconsider his inaction in this regard.

⁹ For the purpose of this opinion and order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).